

**MINUTES OF THE PUBLIC MEETING
OF THE RHODE ISLAND ETHICS COMMISSION
REGULATION SUBCOMMITTEE B**

April 18, 2006

The Rhode Island Ethics Commission Regulation Subcommittee B held its 5th meeting following the conclusion of the regularly scheduled full Ethics Commission meeting on Tuesday, April 18, 2006 at the Rhode Island Ethics Commission conference room, located on the 8th floor of 40 Fountain Street, Providence, Rhode Island, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following subcommittee members were present:

Barbara Binder, Vice Chair Richard E. Kirby*

George E. Weavill, Jr., Secretary James C. Segovis

Also present were Senior Staff Attorney Katherine D'Arezzo and Staff Attorney Macall Robertson.

At approximately 10:40 a.m., Vice Chair Binder opened the meeting.

The Commissioners discussed three preliminary draft proposed regulations, with corresponding memoranda, pertaining to R.I. Gen.

Laws §§ 5(e), (n), and (o). Commissioner Segovis inquired whether a one year waiting time period was sufficient. Commissioner Binder stated that she did not think more than one year was necessary based upon her work experience in Rhode Island government. The Commissioners discussed the pros and cons of extending the waiting period. Commissioner Segovis commented that the Commission would need a good rationale for extending the time period. Senior Staff Attorney D'Arezzo pointed out that the Rhode Island Supreme examined revolving door provisions in the 1993 Advisory Opinion to the Governor and found a one year prohibition reasonable under rational-basis scrutiny. She noted that the opinion did not consider longer time prohibitions and that it is likely the Commission would face a legal challenge to an extended time period. By consensus, the Commissioners agreed that the one year time period was satisfactory.

*** At approximately 10:49 a.m., Commissioner Kirby arrived.**

Commissioner Binder suggested drafting language to define representing one's self to include directing someone else to represent one's interest. Commissioner Weavill noted that hiring an attorney or agent to represent one's interest is the same as appearing oneself. Commissioner Kirby suggested that the language include directing an employee to appear on one's behalf. He discussed prior advisory opinions dealing with employees and associates of law firms where a partner would appear before the employee/associate's

public body. Commissioner Segovis discussed looking into what is done on the federal level and Commissioner Binder suggested looking at the language of other districts regarding “representing oneself.” The Commissioners discussed drafting a regulation defining representing oneself for purposes of section 5(e) and Proposed Regulation C to include an official directing an agent, attorney, or employee to represent their interest. Senior Staff Attorney D’Arezzo explained the similar issues presented in the William Smith case in 1999. Staff Attorney Robertson pointed out that such a proposal could only apply when the interest being represented was solely that of a public official as the Code of Ethics can only require a public official to recuse and cannot prohibit an appearance by a private person not subject to the Code. By consensus, the Commissioners directed the Staff to draft a proposal prohibiting an official from directing an attorney, agent, or employee from representing the official’s interest before their own board.

Commissioner Weavill suggested expanding the breadth of preliminary draft proposal C, subsection (b) to include more than “control.” Commissioner Segovis proposed adding “influence” and Commissioner Binder recommended adding “participation.” Commissioner Kirby advised keeping the word “substantial” as this word is defined in case law with regard to “substantial evidence” in zoning matters as being more than a scintilla but less than a preponderance. By consensus, the Commissioners agreed to revise subsection (b) throughout its provisions to cover “control, influence,

and/or participation.”

Commissioner Binder suggested defining “a person holding a position in the Governor’s Office” to include, but not be limited to, the positions listed in the definition of “substantial control.” Commissioner Kirby pointed out that a person could be working temporarily for the Governor’s Office on a particular project and that language be added to cover persons who fulfill the duties of the Governor’s Office. Staff Attorney Robertson pointed out that subsection (b) does not apply to a person’s public duties. The Commissioners discussed how the Department of Administration is essentially part of the Governor’s Office and adding the Department of Administration and the position title Budget Director to the prohibitions in subsection (b).

Commissioner Segovis suggested drafting a new proposal to prohibit department heads, directors, and top policy-makers of state departments from appearing before the Governor’s Office and the Department of Administration for a period of one year after leaving office. By consensus, the Commissioners agreed to such a proposal and that it cover “other political appointments.” The Commissioners discussed whether such a proposal or the existing subsection (b) should have an exception for a substantial change in circumstances, such as a change in administration. By consensus, the Commissioners agreed that the current hardship exception could be applied in such a situation.

Upon motion made and duly seconded, it was

VOTED: To approve the minutes of the Open Session meeting of the Ethics Commission Regulation Subcommittee B held on April 4, 2006.

AYES: Barbara Binder, George E. Weavill, Jr., Richard E. Kirby, and James C. Segovis.

*** At approximately 11:42 a.m., Commissioner Kirby left the meeting.**

The Commissioners next considered preliminary draft proposals A and B. The Commissioners discussed adding an exception to proposal A for senior policy-making, discretionary, or confidential positions, which exists in section 5(n). Senior Staff Attorney D'Arezzo explained why such an exemption was not included and its impact. By consensus, it was agreed that such a proposal be added to proposal A.

By consensus, the subcommittee meeting adjourned at approximately 12:08 p.m.

Respectfully submitted,

Macall S. Robertson
Staff Attorney